

Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

KELSEY CURTIS,

Plaintiff,

v.

JAMES RIVER INSURANCE COMPANY,

Defendant.

NO. 2:19-CV-01565 MJP

AGREED PRETRIAL ORDER

Under Local Court Rule 16 and the Court's Minute Entry (Dkt. 21), the parties submit this
Agreed Pretrial Order:

I. JURISDICTION

Defendant is an insurance company organized under the laws of the State of Ohio, with its principal place of business in Virginia. Plaintiff is a resident of Washington State. Plaintiff filed suit in King County Superior Court on September 13, 2018. Defendant removed the case to the United States District Court, Western District of Washington, on October 1, 2019, citing 28 U.S.C. § 1332, § 1441 and § 1446. Plaintiff has not objected to the jurisdiction of the federal court. Accordingly, jurisdiction is appropriate based on diversity of citizenship of the parties.

II. CLAIMS AND DEFENSES

Plaintiff will pursue the following claims at trial:

1. Breach of UIM Contract
2. Negligence
3. Bad Faith
4. Violation of the Insurance Fair Conduct Act (IFCA)
5. Violation of the Consumer Protection Act (CPA)

Defendant will pursue the following claims at trial:

1. Plaintiff failed to mitigate her damages
2. A genuine dispute exists as to the amount Plaintiff is legally entitled to recover as compensatory damages from defendant Cooper.
3. Plaintiff failed to properly communicate with James River as to her claim for UM coverage benefits, including but not limited to engaging in good faith settlement negotiations.

III. ADMITTED FACTS

1. Plaintiff was a passenger in a vehicle operated on behalf of Uber by Yakub Kahn when his vehicle was struck by a vehicle operated by Andie Cooper on October 8, 2016.
2. Plaintiff sustained certain injuries in the collision.
3. Defendant issued Policy No. CA436100WA-01 to Rasier, LLC, et al., policy period 03/01/16-03/01/17 ("Policy").
4. The Policy provides uninsured motorist coverage for passengers riding in vehicles covered by the Policy.
5. Andie Cooper was an uninsured driver.
6. Plaintiff made a claim for UM coverage under the Policy.
7. Defendant accepted coverage for Plaintiff's UM claim.
8. On April 12, 2018, Defendant received correspondence from Plaintiff which set

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IV.

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V

On behalf of Plaintiff

WITNESS	NATURE OF TESTIMONY	STATUS
Kelsey Curtis c/o PWRFL 1501 Fourth Ave, Suite 2800 Seattle, WA 98101 (206) 624-6800	Plaintiff Kelsey Curtis will testify concerning the collision, her injuries, as well as any facts that pertain to the claims at issue in this lawsuit.	Will testify
Steven Strzelec Strzelec Consulting Services 20719 NE 8th St. Sammamish, WA 98074 (206) 427-4322	Steven Strzelec will testify about claims-handling standards nationally and in Washington. He will testify that James River failed to meet minimum industry standards for handling UIM claims. He will testify that James River's repeated offer of 50 cents for general damages, non-disparagement and confidentiality is an unreasonable denial of payment of benefits under a UIM policy that contractually requires James River to fulfill the promise of paying all	Will testify

1		<p>sums that Ms. Curtis is legally entitled to recover as compensatory damages from the owner or driver of an uninsured vehicle. He will testify that James River did not adequately investigate Ms. Curtis' UIM claim and that James River did not have adequate support to offer 50 cents in general damages to Ms. Curtis. He will testify that James River's offer appears to be based on conjecture and speculation, not a reasonable investigation. He will testify that in determining how the accident and injury has impacted the insured's life, a claim handler needs to determine all of the injuries suffered in the accident, the pain and suffering caused by those injuries, and how those injuries and the accident have impacted the insured's life and insured's ability to lead their normal pre-accident life.</p> <p>Mr. Strzelec will testify that James River failed to meet its obligation of at least giving equal consideration to Ms. Curtis' interests. Mr. Strzelec will also testify that James River's refusal to disclose to Ms. Curtis the UIM policy limits and other provisions even though Ms. Curtis was an insured under the UIM policy is a violation of national first-party claims handling standards. Mr. Strzelec will point out that this industry standard that James River failed to comply with also has a corresponding WAC.</p>	
18	<p>Kris Moe, MD Harborview Medical Center Otolaryngology-Head and Neck Surgery Clinic 325 Ninth Avenue Seattle, WA 98104 206-520-5000</p>	<p>Dr. Moe will be called as a witness at trial and will testify regarding his care and treatment of Ms. Curtis following the collision. Please see his medical records previously produced for additional details. Dr. Moe will testify that Ms. Curtis sustained facial injuries due to the collision and that her surgery and nasal drainage were caused by the collision. He will testify as to his diagnosis of and prognosis for Ms. Curtis. He will testify that Ms. Curtis' care and treatment at Harborview following the collision was reasonable and necessary. He will also testify that he referred Ms. Curtis to Dr. Davis for future treatment options due to the permanency of her nasal drainage and will testify regarding the nature of that procedure.</p>	Will testify

Greg Davis, MD UW Medicine Otolaryngology-Head and Neck Surgery Clinic 1959 NE Pacific, 3rd Floor Seattle, WA 98195 206-598-4022	Dr. Davis will be called as a witness at trial and will testify regarding his care and treatment of Ms. Curtis following the collision. He will testify that Ms. Curtis' options for treatment of her nasal drainage are to continue Atrovent nasal spray or undergo Clarifix cryotherapy on her posterior nasal nerve. Dr. Davis will testify that he recommends Clarifix and that the procedure will more probably than not need to be repeated every one to two years for the foreseeable future.	May testify
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On behalf of Defendant:

WITNESS	NATURE OF TESTIMONY	STATUS
James Rockwell, MD c/o Machaon Medical Evaluations 509 Olive Way, Ste 1045 Seattle, WA 98101 (206) 323-1999	Dr. Rockwell will be called to testify regarding his examination of the plaintiff, his review of her medical records, her alleged injuries, whether the alleged injuries are related to the accident at issue, and the necessity and reasonableness of her past medical treatment and suggested future medical treatment. Dr. Rockwell will testify and offer expert medical testimony regarding all matters contained in his report including but not limited to opinions and conclusions about the nature and extent of the plaintiff's alleged accident-related injuries; her medical condition prior to and subsequent to the subject accident; whether her treatment was reasonable, necessary, and related to the subject accident; the need for any future treatment and whether any need for future treatment would be related to the subject accident; the existence of any relevant pre-existing conditions; the causes and etiologies of any medical issues from which plaintiff claims to suffer; and her diagnosis and prognosis. Dr. Rockwell will further testify regarding issues raised by plaintiff's witnesses.	Will testify
Gena Farrar c/o Lee Smart, P.S., Inc. 701 Pike St, Ste 1800 Seattle, WA 98101 (206) 624-7990	Gena Farrar will testify concerning the case handling for plaintiff's UIM claim, her correspondence with plaintiff's former and current counsel, as well as any facts that pertain to the claims at issue in this lawsuit.	Will testify

Ann Rosato Peterson Wampold Rosato Feldman Luna 1501 Fourth Ave, Ste 2800 Seattle, WA 98101-3677 (206) 624-6800	Ann Rosato is one of the plaintiff's attorneys in this matter and she may be called to offer testimony regarding her communications with representatives and/or agents of defendant James River Insurance Company.	May testify
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VI. EXHIBITS

Plaintiff's list of proposed trial exhibits:

No.	Exhibit	Stipulated Authentic and Admissible	Authenticity Stipulated, Admissibility Disputed	Authenticity and Admissibility Disputed
Plaintiff's Exhibits				
1	Claim notes from James River Ins. Co.	X		
2	Miscellaneous correspondence			X
3	Medical Records from Harborview Medical Center/UW Medicine			X
4	Medical Record from Greg Davis, MD			X
5	ER 1006 Summary of Medical Bills		X	
6	Medical Bill from American Medical Response	X		
7	Medical Bills from Harborview Medical Center/UW Medicine	X		
8	ER 1006 Summary of Medical Bills		X	
9	Medical bill from UW Medical Center			X
10	Photos		X	
11	Pharmacy Records		X	
Defendant's Exhibits				

No.	Exhibit	Stipulated Authentic and Admissible	Authenticity Stipulated, Admissibilit v Disputed	Authenticity and Admissibility Disputed
101	Claim Notes from James River Ins. Co.		X	Object (in part) to p. 41, as this is an effort to admit evidence of claim evaluation while refusing to provide deposition or any other discovery on the same issue, violating <i>Seattle NW Sec. Corp. v. SDG Holding Co., Inc.</i> 61 Wn. App. 725, 744, 812 P.2d 488 (1991) and doctrine of judicial estoppel and fundamental fairness; <i>see</i> Pl. MIL 7.

No.	Exhibit	Stipulated Authentic and Admissible	Authenticity Stipulated, Admissibility Disputed	Authenticity and Admissibility Disputed
102	Letter from Richard Mann to James River Insurance with enclosed records		X	Object only in part, to the following: pp. 5 (reference to demand amount under Pl. MIL 9, FRE 403-404, 408). pp.10,11,17,19,31, 35,43,81, 123 (all references that Plaintiff was "unrestrained;" see Pl. MIL 8, RCW 46.61.68(3) and (6); <i>Amend v. Bell</i> , 89 Wn.2d 124, 570 P.2d 138 (1977); FRE 402-403). pp. 39, 147-152, 155-164, 173-179 (all references to insurance and insurance payments; see Pl. MIL No. 5, collateral source rule and FRE 402-403). p. 41 (reference to "pregnancy test" not relevant under FRE 402-403).
103	Email from Gena Farrar to Dana Vizzare, Ann Rosato, Michael Wampold, and Jordyn Dargitz with attached policy and declarations page for Policy CA436100WA-01		x	FRE 402, 403

ACTION BY THE COURT

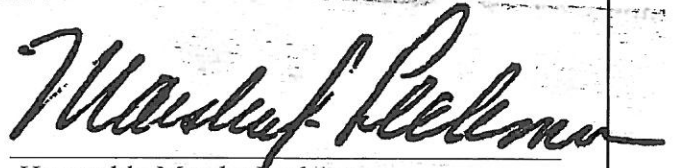
- (a) This case is scheduled for trial before a jury on December 3, 2019.
- (b) Trial briefs shall be submitted to the Court on or before November 15, 2019.
- (c) Jury instructions requested by either party shall be submitted to the Court on or before

November 15, 2019.

(d) Suggested questions of either party to be asked of the jury by the Court on voir dire shall be submitted to the Court on or before November 15, 2019.

This order has been approved by the parties as evidenced by the signatures of their counsel. This order shall control the subsequent course of the action unless modified by a subsequent order. This order shall not be amended except by order of the court pursuant to agreement of the parties or to prevent manifest injustice.

DATED this 3rd ^{December} day of ~~November~~, 2019.



Honorable Marsha Pechman
United States District Judge

PETERSON | WAMPOLD
ROSATO | FELDMAN | LUNA

/s/Michael S. Wampold
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LEE SMART, PS, INC.

/Mr. Wraith to physically sign/Steven G.
Wraith, WSBA No. 17364
Kyle J. Rekofke, WSBA No. 28911
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3 CERTIFICATE OF SERVICE
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5 I hereby certify that on the date shown below I electronically filed the foregoing
6 document with the Clerk of the Court using the CM/ECF system which will send notification of
7 such filing to all counsel of record.

8 **Dated:** November 15, 2019
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10 /s/Dana Vizzare

11 Dana Vizzare, Paralegal
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